



Music Publishers' Association of the United States

Minutes of the Officers & Board of Directors Meeting
17 November, 2005 at BMI

Julie Averill (Administrator)	Present
Marco Berrocal	Present
Arnold Broido	Present
Gene Caprioglio	Absent
Daniel Dorff	Present
Louis Fifer	Absent
Susan Feder	Present
Kathy Fernandes	Absent
Maggie Heskin	Absent
Brian Hill	Absent
Lauren Keiser (President)	Present
James Kendrick Esq., Counsel	Present
Kathleen Marsh	Present
Larry Morton	Absent
David Murray	Present
Dave Olsen	Absent
Marc Ostrow	Present
Peter Primont	Present
Norman Ryan	Absent
Lynn Sengstack (Treasurer)	Present
John Shorney	Present
Robert Thompson (VP/Secretary)	Present

Housekeeping & Announcements

The meeting was called to order by Lauren Keiser at 10:05am

Marco Berrocal, the son of Beebe Bourne, has graciously agreed to fill her position on the Board.

The minutes of the October 20, 2005 meeting were approved as circulated.

Treasurer's Report

A motion to approve the Activity Report through Oct. 31, 2005 was approved as circulated. Lynn Sengstack expressed the need to review budgets for various committees, the largest expenditure being press & publicity. President Keiser mentioned that copyright enforcement will require a line-item in the budget. He also requested that committee chairs report to Lynn Sengstack on their budget needs. Additionally, if anyone has any projects or ideas that would require funding, he asked that they be submitted along with a budget.

Old Business

- I. Annual Meeting (June 9, 2006)
 - a. Steve Jobs/Motivational Speaker. President Keiser sent a letter of invitation to Steve Jobs. Benjamin Zander (suggested by Daniel Dorff) and Ronan Tynan (suggested by Peter Primont) were also suggested as possibilities. President Keiser mentioned that one of the goals for the Annual Meeting should be to assist and enhance the leadership abilities of those within the industry, as well as to help and develop newer, younger members.
 - b. Artistic Administrators. There was discussion as to having a panel with Artistic Administrators of orchestras, concert halls and opera houses.
 - c. Digital Print. Given the quantum leap in digital publishing in the past five years, it was felt this was a topic worthy of a panel discussion.
 - d. MOLA Process. The joint committee (MOLA/MLA/MPA) expressed interest in a possible panel at the Annual Meeting, the focus of which would be on developing and enhancing the relationship between librarians and publishers
 - e. Management Training Seminar. Lynn Sengstack mentioned the Disney Corporation having done leadership seminars for RPDMA. Perhaps it might be helpful to MPA members to have an outside management trainee company conduct a session for MPA members.
 - f. It was mentioned that Christine Dodd, the Music Administrator for the New York City Public Schools would be an interesting luncheon speaker. President Keiser mentioned that Fred Koenigsberg is always an entertaining and reliable guest speaker. It was also suggested that an update on international copyright issues be considered, since last year's panel was deemed very interesting. Also, a panel involving key organizational heads (MENC, etc.) would be of interest to members.

President Keiser will take the above ideas and formulate a consensus and send it via email to Board Members. It was also mentioned that having two sessions in the morning and two in the afternoon would be a good idea.

- II. Boulder, CO School District. President Keiser reported that the Fine Arts Coordinator of the Boulder, Colorado Public School District promptly responded to a cease and desist letter sent to the District by Jim Kendrick on behalf of the MPA, stating that the MPA's position was absolutely correct. Further, the Administrator promised to adopt changes within the school district to insure that the District is adhering to Copyright Law. Pres. Keiser felt this was a very positive development for the MPA and for the industry as a whole, setting a positive precedent. It was felt that two issues need to be, in some way, publicized: first, that the MPA is a friend of the RPDMA and second, that the action of the School District should be an example for other school districts in the USA to follow. .

President Keiser also mentioned that the MPA is now a sponsor of ASCAP's "I Create Music" Campaign and Conference.

New Business

- I. Legal/Legislative Report (presented by Jim Kendrick, Esq.)
 - a. Vargas v. Pfizer: A federal court in New York has refused to dismiss a copyright lawsuit against Pfizer Inc. for allegedly misusing a song in an ad campaign for the arthritis drug Celebrex. Ralph Vargas and Bland-Ricky Roberts, the writers of "Bust Dat Groove Without Ride," filed suit against Pfizer in the U.S. Court for the Southern District of New York, alleging that the Celebrex ads use key musical themes from their song. Pfizer countered with a summary judgment motion, asserting that the song lacked the requisite originality for copyright protection. The song runs for one minute and consists of an identical drum pattern looped 27 times. The plaintiffs say the song uses a cymbal, snare drum and bass drum and that their selection of these musical elements was an original creative choice. Pfizer claimed that the one-bar drum rhythm was a common track whose elements are found in elementary drum instruction books and are frequently used by musical artists. U.S. District Judge William H. Pauley noted that the threshold for originality in copyright infringement cases is low, amounting to little more than a prohibition of actual copying. He also said the fact that elements of the composition appeared in other musical works was irrelevant in assessing originality, because originality does not necessarily signify novelty. Works worthy of copyright protection may be original, even if they closely resemble other works, so long as the similarity is fortuitous and not the result of copying. Concluding that there was a genuine dispute of fact over the originality of the song, Judge Pauley denied Pfizer's motion for summary judgment.
 - b. H.R. 1201 Digital Media Consumers' Rights Act of 2005: Hearings were held on the DMCR Act, which would amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes. According to H.R. 1201, "the limited introduction into commerce of `copy-protected compact discs' has caused consumer confusion and placed increased, unwarranted burdens on retailers, consumer electronics manufacturers, and personal computer manufacturers responding to consumer complaints, conditions which will worsen as larger numbers of such discs are introduced into commerce. Recording companies introducing new forms of copy protection should have the freedom to innovate, but should also be responsible for providing adequate notice to consumers about restrictions on the playability and recordability of `copy-protected compact discs'". In contrast, those opposed to HR 107 contend that without the prohibition against breaking encryption, the protection for copyrighted works under current law would be weakened. They also hold that allowing persons the ability to "unlock" anti-tampering technology and access the copyrighted material would quickly spur piracy gadgets and technology that would quickly devalues their products and put them out of business.
 - c. Sony/BMG Controversy. On November 16, 2005, US-CERT, part of the United States Department of Homeland Security, issued an advisory on

XCP DRM, Sony/BMG's new copy protection software. They said that XCP uses rootkit technology to hide certain files from the computer user, and that this technique is a security threat to computer users. They also said one of the uninstallation options provided by Sony BMG introduces further vulnerabilities to a system. On November 29, 2005 the New York Attorney General Eliot Spitzer found through his investigators that despite the recall of November 15, Sony BMG CDs with XCP were still for sale in New York City music retail outlets. Spitzer said "It is unacceptable that more than three weeks after this serious vulnerability was revealed, these same CDs are still on shelves, during the busiest shopping days of the year". It appears that several states as well as the federal government are now investigating the matter.

- II. Hall of Fame. President Keiser suggested that the MPA consider the establishment of an Award to be given by the MPA each year at the Annual Meeting. The goal would be to recognize and honor those who have made outstanding contributions to the Industry. A set of guidelines for the award would need to be developed, especially the criteria used to select a recipient. Susan Feder urged the MPA to exercise caution in establishing this award, lest it become simply another awards ceremony, and not truly contribute to the mission of the MPA. Lynn Sengstack suggested that the Executive Committee of the MPA be the committee to develop and oversee the establishment of this Award. President Keiser will discuss the matter within the Executive Committee.

Committee Reports

ACDA: No Report.

Annual Meeting: Reported Above

Archive Committee:

Awards Committee: Paul Sadowski has accepted and agreed to chair the Awards Committee.

Contribution Committee: No Report. Guidelines for donations to other organizations (i.e., The American Music Center) are being developed by the Committee Chair, Jenny Bilfield.

Copyright/Licensing: Marc Ostrow reported on the Digital Millennium Copyright Act (herein after referred to, for the sake of brevity, as the DMCA). Section 511.c.3 of the DMCA offers relief to copyright owners through a "notice & take down letter" that requires websites and/or their hosts to remove copyrighted material from their servers. Non-compliance could result in hosts losing their safe-harbor status. Marc drafted a notice and takedown letter to be sent on behalf on MPA members to websites that are illegally making available copyrighted sheet music for download. Marc felt that targeting additional sites with online copyrighted lyrics would be difficult as "the train has already left the station". The letter has been passed on to Jim Kendrick for comment. Jim has been asked to draft a consent letter for MPA members to sign. This should be finalized by the next meeting. Kathleen Marsh mentioned Time Magazine which mentioned www.olga.net, a loose network of websites that proffers illegal guitar tabs. MusicNotes sent a letter to the editor of the Time article. President Keiser met with David Israelite of the NMPA who previously worked in Justice Department. Mr. Israelite said he could put the MPA in touch with officials within the Department.

Educations Contacts & Trade Relations: No Report

Engraving and Production: No Report. Dan Dorff will speak with Maggie Heskin and develop a discussion list.

Finance/Audit: Arnold Broido reported that he was recently in contact with Lynn Sengstack.

International Contacts: Arnold Broido reported on the current attack on WIPO from member countries such as Brazil and India, who believe that the mission of WIPO should be technology and not copyright driven. In other words, WIPO should be changed to a tech organization and copyright should serve the needs of technological innovation. The UN Educational, Scientific and Cultural Organization (UNESCO) voted overwhelmingly on 20 October to approve a new global convention for the protection of cultural diversity, in spite of staunch opposition from the US. Supporters of the treaty hailed it as a victory for free expression, claiming that it will help governments protect national cultural identities and traditions from the homogenizing pressures of foreign competition. Opponents charged that it could curb free speech and serve as a pretext for arbitrary protectionism, particularly in the entertainment industry. However, the accord's implications for existing and future trade law remain far from clear.

Membership: An application from Jimmy Van Heusen (estate) was received. No action was taken at this time.

MLA/MOLA/MPA: See Above (Annual Meeting)

Performance: No Report

Press/Publicity/Public Relations: Kathy Marsh has been in touch with Julie Averill and Boom Design Group to distribute HTML emails and put together a database with full membership details, press contacts, etc. Julie Averill reported that the database management would not change the proposal from Boom, but designing the HTML email template would require an additional fee.

Research/Development/New Technology: No Report.

President Keiser will review and distribute the MPA Bylaws.

The meeting was adjourned at 11:35am

The next meeting will take place January 12, 2006 at ASCAP.